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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/832,637	04/11/2001	Alfons Gail	10537/96	1822

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KENYON & KENYON LLP  
ONE BROADWAY  
NEW YORK, NY 10004

EXAMINER
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KYLE, MICHAEL J

ART UNIT	PAPER NUMBER
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3677

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/08/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

09/832,637

Applicant(s)

GAIL ET AL.

Examiner

Michael J. Kyle

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-5, 7-13, 15, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Werner (WO98/53229) in view of Flower (U.S. Patent No. 5,474,305). With respect to claims 1 and 2, Werner discloses a brush seal comprising a bristle housing (3, 4) press fit in an axial space between a fastening element (downwardly extending plates to the left of plate 3) and a stator (2) and on the stator and including a cover plate (3) and a supporting plate (4), bristles (5), circumferential surface (9), two side surfaces (vertical portions of 3 and 4), a first positioning arrangement on a side surface (portion of 4 abutting 2), and a second positioning arrangement on a rotor (portion of 2 abutting 4). The bristle housing is secured against movement in a radial direction relative to the stator. Werner fails the first and second positioning arrangements to be configured to interact with each other in a positive locking manner providing definite positioning of the bristle housing.

3. Flower teaches a brush seal comprising a bristle housing (52, 57, 58) arranged on a stator and including a cover plate (52) and support plate (58). The bristle housing further comprises a circumferential surface (on top of 58) and two side surfaces (vertical sides of 58). Bristles (56) are formed in the bristle housing and include free ends oriented toward a rotor (50). A first positioning arrangement (53) is provided on a side surface, and a second positioning arrangement

Art Unit: 3677

is provided on the stator (portion receiving pin 53). The first and second positioning arrangements interact with each other in a positive locking manner and provide definite positioning of the bristle housing so as to prevent relative rotation and reversed mounting of the entire housing and maintain against movement in a radial direction. The housing cannot be reversibly mounted as shown in figure 9, because the portion of plate 52 that is received in element 51, would not fit if the plate were reversed. The pin, or projection 53, has a lenticular section at one end. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Werner to include the pin 53 and slot arrangement shown by Flower in figure 9 in order to prevent rotation of the bristle housing relative to the stator. The combination would result in the press fit of Werner being maintained in rotational and radial directions.

4. With respect to claims 3-5, Werner discloses the cover plate and supporting plate are formed by non-cutting shaping and deep drawing (column 1, line 66). The bristle housing (3, 4) is formed by flanging the cover plate and supporting plate.

5. With respect to claims 7 and 8, the combination of Werner and Flower discloses the first positioning arrangement includes an integral projection (53 of Flower) that projects beyond at least one side surface, and the second positioning arrangement includes a recess (receiving 53, in Flower) formed in the stator. The projection is engaged in the recess. Because the projection is integral with the cover plate, it stands to reason that it is formed during the forming of the cover plate during the non-cutting shaping of the cover plate described in Werner.

6. With respect to claim 9, Werner discloses a brush seal comprising a bristle housing (3, 4) press fit in an axial space between a fastening element (downwardly extending plates to the left

Art Unit: 3677

of plate 3) and a stator (2) and on the stator, including a cover plate (3) and a supporting plate (4), bristles (5), circumferential surface (9), two side surfaces (vertical portions of 3 and 4), a first positioning arrangement on a side surface (portion of 4 abutting 2), and a second positioning arrangement on a rotor (portion of 2 abutting 4). Werner fails to disclose the first and second positioning arrangements to be configured to interact with each other in a positive locking manner providing definite positioning of the bristle housing. Werner also fails to disclose that the first positioning arrangement includes an integral projection that is either lenticular or conical, the second positioning arrangement includes a recess, and that the integral projection is engageable in the recess.

7. Flower teaches a brush seal comprising a bristle housing (52, 57, 58) arranged on a stator and including a cover plate (52) and support plate (58). The bristle housing further comprises a circumferential surface (on top of 58) and two side surfaces (vertical sides of 58). Bristles (56) are formed in the bristle housing and include free ends oriented toward a rotor (50). A first positioning arrangement (53) is provided on a side surface, and a second positioning arrangement is provided on the stator (portion receiving pin 53). The first and second positioning arrangements interact with each other in a positive locking manner and provide definite positioning of the bristle housing so as to prevent relative rotation and reversed mounting of the entire housing and maintain against movement in a radial direction. The housing cannot be reversibly mounted as shown in figure 9, because the portion of plate 52 that is received in element 51, would not fit if the plate were reversed. The pin, or projection 53, has a lenticular section at one end. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Werner to include the pin 53 and slot arrangement shown by Flower

Art Unit: 3677

in figure 9 in order to prevent rotation of the bristle housing relative to the stator. The combination would result in the press fit of Werner being maintained in rotational and radial directions.

8. With respect to claim 10, Werner discloses the cover plate to have a flanged section (7) and the supporting plate to have an axial section (portion of 4, below 7, extending left to right). The axial section extends beyond one of the side surfaces and is disposed at an end of the cover plate close to the circumferential surface. The flanged section encloses a free end of the axial section projecting radially beyond the free end of the axial section and forming an undercut (at 6).

9. With respect to claim 11, Werner discloses the flanged section (7) to include an inner side surface forming the undercut, the inner side surface being disposed at a distance from the side surface of the supporting plate. The portion of the inner side surface that forms the under cut is at a distance from the supporting plate.

10. With respect to claims 12 and 13, Werner, as modified by Flower's embodiment in figure 9, shows the first and second positioning arrangements (53 and associated slot of Flower) to include at least one pair of holes (in stator, receiving 53, aligned with 17) in the stator in alignment with a pair of holes in the axial flange (17), where the pair of holes receive a fastener (53). The fastener is a bolt.

11. With respect to claim 15, Flower teaches the first and second positioning arrangements include an integral radial projection and (53) and a corresponding recess (receiving 53, see figure 9). The projection engages the recess to prevent relative rotation of the bristle housing.

Art Unit: 3677

12. With respect to claim 16, Flower teaches the first and second positioning arrangements include a plurality of integral radial projections (53) and a corresponding recesses (receiving 53). The plurality of these is shown by holes 17, in figure 3, which receive bolts 53. The projection engages the recess to prevent relative rotation of the bristle housing.

13. Claims 6, 8, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Werner in view of Flower and Nakamura et al (U.S. Patent No. 6,106,190). Werner discloses a brush seal comprising a bristle housing (3, 4) press fit in an axial space between a fastening element (downwardly extending plates to the left of plate 3) and a stator (2) and on the stator, including a cover plate (3) and a supporting plate (4), bristles (5), circumferential surface (9), two side surfaces (vertical portions of 3 and 4), a first positioning arrangement on a side surface (portion of 4 abutting 2), and a second positioning arrangement on a rotor (portion of 2 abutting 4).

Werner fails to disclose the first and second positioning arrangements to be configured to interact with each other in a positive locking manner providing definite positioning of the bristle housing. Werner also fails to disclose the first positioning arrangement to include a spot weld that projects beyond the circumferential surface, and the second positioning arrangement to be recess.

14. Flower teaches a brush seal comprising a bristle housing (52, 57, 58) arranged on a stator and including a cover plate (52) and support plate (58). The bristle housing further comprises a circumferential surface (on top of 58) and two side surfaces (vertical sides of 58). Bristles (56) are formed in the bristle housing and include free ends oriented toward a rotor (50). A first positioning arrangement (53) is provided on a side surface, and a second positioning arrangement is provided on the stator (portion receiving pin 53). The first and second positioning arrangements interact with each other in a positive locking manner and provide definite

Art Unit: 3677

positioning of the bristle housing so as to prevent relative rotation and reversed mounting of the entire housing and maintain against movement in a radial direction. The housing cannot be reversibly mounted as shown in figure 9, because the portion of plate 52 that is received in element 51, would not fit if the plate were reversed. The pin, or projection 53, has a lenticular section at one end. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Werner to include the pin 53 and slot arrangement shown by Flower in figure 9 in order to prevent rotation of the bristle housing relative to the stator. The combination would result in the press fit of Werner being maintained in rotational and radial directions.

15. Nakamura teaches a projection (66b in figure 5b) on a first positioning element (66b) which fits into a recess (62b) of the second positioning element (60) to prevent the two elements from rotating with respect to one another. Nakamura et al further discloses an embodiment having a welded projection (W in figure 6b) that serves the same purpose as the projection in figure 5b. The projection (W), formed during a non-cutting shaping process also projects beyond one side surface and is lenticular in shape as claimed. Both projections function to prevent the first positioning arrangement, or the projection, from rotating with respect to the second positioning arrangement (60). Inasmuch as the references disclose these elements as art recognized equivalents, it would have been obvious to one of ordinary skill in the art to substitute one for the other. In re Fout, 675 F.2d 297, 301, 213 USPQ 532, 536 (CCPA 1982). One skilled in the art would incorporate such projections with the motivation to prevent the first positioning element from rotating with respect to the second positioning element.



Art Unit: 3677

16. Claim 14 rejected under 35 U.S.C. 103(a) as being unpatentable over Werner in view of Flower, as applied to claim 1 above, and further in view of Hanrahan (U.S. Patent No. 5,066,025). Werner and Flower fail to disclose angled bristles. Hanrahan teaches that it is known in the art that bristles are usually located at an angle with respect to the radius for the purpose of maintaining proper sliding relationship with the rotor (column 1, lines 21-28). Where the range of article sizes disclosed in the prior art envelops the recited range, and there is no showing of criticality of the recited range, such recited range would have been obvious to one of ordinary skill in the art. In re Reven, 390 F.2d 997, 156, USPQ 679 (CCPA 1968).

#### ***Response to Arguments***

17. Applicant's arguments filed December 11, 2006 have been fully considered but they are not persuasive. Applicant's argue that Werner does not show a bristle housing press fit in an axial space between a fastening element and a rotor or stator. Examiner respectfully disagrees. Examiner now considers elements the plates 3, 4 to comprise the bristle housing. Element 2 in Werner is now designated as the stator. This new interpretation was necessitated by applicant's amendment. In Werner, the housing 3, 4 is in a axial space between a fastening element (downward extending plates immediately to the left of plate 3) and the stator (downward extending portion of 2). Movement in the radial direction is prevented from the contact surface illustrated by reference character 9 in Werner.

18. Applicant argues that Flowers teaches an arrangement that provides for radial movement of the brush seal, and thus, does not maintain the press against movement in a radial direction. Examiner notes that the claim requires the bristle housing to be press fit, and maintained against

Art Unit: 3677

radial motion. In Flower, while the bristles are capable of radial motion, the bristle housing, at 52, is maintained against radial motion, thus meeting the limitations of the claim.

19. Applicant argues that Flower doesn't show a brush seal press fit into an axial space between the fastening element and the stator. Examiner notes that this feature is shown by Werner, and Flower is not cited to teach such a feature. Regardless, Flower shows this where housing 52 is press fit in an axial inlet of 51 between fastening element 53 and stator 51.

20. Applicant alleges that the Office Action admits the Flower was not relied upon to show a press fit in an axial space between a fastening element and a first one of the rotor stator. Examiner respectfully disagrees with this allegation. Applicant has not cited where this "admission" was made in the Office Action. Further, this limitation was not present in any of the claims addressed by the previous Office Action, so there is was no requirement of any consideration to be given to such feature.

21. Applicant argues that any modification to Flower would render it unsuitable for its intended purpose. Examiner notes that Werner is the reference being modified in the rejection, not Flower. Modification of Werner as taught by flower is properly motivated as presented in the rejection above.

22. The same reasoning stated above applies to applications arguments regarding claim 6, and those claims depending therefrom.

### ***Conclusion***

23. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 3677

24. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Kyle whose telephone number is 571-272-7057. The examiner can normally be reached on Monday - Friday, 8:30 am - 5:00 pm.

26. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 571-272-7075. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

27. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
**ROBERT J. SANDY**  
**PRIMARY EXAMINER**